

**STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION**

**IN THE MATTER OF MARISELA
ORNELAS, d/b/a VISION MOBILE
HOME PARK, LLC,**

WQCC No. 21-04 (CO)

Respondent.

**ORDER ACCEPTING ORAL STIPULATION FOR WAIVER OF NINETY-DAY
DEADLINE FOR PUBLIC HEARING, SCHEDULING COMPLIANCE ORDER
HEARING, AND APPOINTING HEARING OFFICER**

THIS MATTER having come before the Water Quality Control Commission (“Commission”) during its regularly scheduled meeting on April 13, 2021, on Respondent’s Answer to Administrative Compliance Order Requiring Compliance and Assessing a Civil Penalty (“Answer”) filed on February 8, 2021, by Respondent Marisela Ornelas (“Respondent”), doing business as Vision Mobile Home Park, LLC, in response to a copy of the Administrative Compliance Order Requiring Compliance and Assessing a Civil Penalty (“Compliance Order”) served on Respondent on January 8, 2021, by the New Mexico Environment Department’s Water Protection Division (“Department”); the Commission having heard from the respective parties or their authorized legal representatives; and the Commission being otherwise sufficiently advised in the premises, **FINDS:**

1. Respondent’s Answer states that it was filed pursuant to NMAC “Title 20.1.1.200 (et. seq.)” in answer to the Department’s Compliance Order and “Attachment 1 Penalty Calculations.” Further, Respondent’s Answer raises several “affirmative defenses” and appears to admit or deny, wholly or in part, allegations in corresponding numbered paragraphs in the Compliance Order.

2. Specifically, Paragraph 39 of Respondent’s Answer reads: “Respondent [p]ursuant to Section 74-6-10(G) of the [Water Quality] Act, has the right to answer this [Compliance] Order

and does hereby request a public hearing.” Paragraphs 41 and 43, respectively, of Respondent’s Answer read: “Respondent does file concurrently A Request for Hearing and Answer to the Order within 30 days after Respondent’s receipt of the [Compliance] Order,” and “Respondent attached a copy of this [Compliance] Order to its Request for Hearing and Answer to the Order.” Paragraph 55 of Respondent’s Answer reads: “Respondent submits this [Answer] in good faith and in an effort to comply with New Mexico Environmental Law and the duties it (sic) has therein.” Finally, Respondent certifies that on January 8, 2021, the “Vice President of Compliance” for Vision Mobile Home Park, LLC, served electronic copies of the “Motion to Dismiss” (rather than Respondent’s Answer) on the Commission Administrator and Department Counsel Christopher Vigil.

3. NMSA 1978, Section 74-6-10(G) (1993) in relevant part provides:

Any compliance order issued by a constituent agency [in this case, the Department] pursuant to this section shall become final unless, no later than thirty days after the compliance order is served, any person named in the compliance order submits a written request to the commission for a public hearing.

4. The prefatory paragraph of Respondent’s Answer cites “Title 20.1.1.200 (et. seq.)” as authority for Respondent’s “right to answer [the Department’s] Compliance Order.” Respondent is appearing *pro se* in this matter; consequently, the substantive contents of Respondent’s Answer and Respondent’s reference to 20.1.3.1 NMAC in her accompanying Request for Hearing are taken together to have fairly referred to 20.1.3.19(A) NMAC, which sets forth the requirements for initiation of a compliance order hearing:

(1) Filing of request: A compliance order hearing shall be initiated by the filing of a request for compliance order hearing within 30 days after the compliance order is served. The respondent shall file the original of the request for compliance order hearing with the commission and serve a copy on the department.

(2) Request for compliance order hearing: The request for compliance order hearing

shall also serve as an answer to the compliance order and shall:

- (a) clearly and directly admit or deny each of the factual assertions contained in the compliance order; but where the respondent has no knowledge of a particular factual assertion and so states, the assertion may be denied on that basis; any allegation of the compliance order not specifically denied shall be deemed admitted;
- (b) indicate any affirmative defenses upon which the respondent intends to rely; affirmative defenses not asserted in the request for compliance order hearing, except a defense asserting lack of subject matter jurisdiction, shall be deemed waived;
- (c) be signed by a person authorized to do so; and
- (d) attach a copy of the compliance order.

5. Respondent's Answer did not fully comply with all the requirements for initiation of a compliance order hearing under 20.1.3.19(A) NMAC in that Respondent did not attach a copy of the Compliance Order to her Answer; however, she submitted a copy of it to the Commission Administrator for filing on February 25, 2021, without subsequent written objection from the Department.

6. The Department did not file any motion or other pleading challenging the legal sufficiency of Respondent's Answer as a "written request to the [C]ommission for a public hearing" under Section 74-6-10(G) or as "a request for compliance order hearing" under 20.1.3.19 NMAC. Likewise, the Department did not file any motion or other pleading seeking dismissal of Respondent's Answer as untimely.

7. Respondent individually and the Department through its legal counsel orally stipulated in open meeting to a waiver of the 90-day deadline under 20.1.3.18(C)(1) NMAC.

IT IS THEREFORE ORDERED:

A. Respondent's request for a compliance order hearing under 20.1.3.19 NMAC is granted,

and the parties' oral stipulation to waive the 90-day deadline in which to hold a public hearing pursuant to 20.1.3.19(B)(1) NMAC is accepted.

B. The compliance order hearing, as that term is defined in 20.1.3.7(A)(7) NMAC, shall be held during the Commission's regularly scheduled meeting on Tuesday, June 8, 2021, using the WebEx platform; the hearing may be continued thereafter if the Commission deems it necessary.

C. A scheduling order shall be issued as provided in 20.1.3.17(B) NMAC, and public notice of the compliance order hearing shall be given as provided in 20.1.3.17(C) NMAC, both as required by 20.1.3.19(B)(2)NMAC.

D. The compliance order hearing shall be conducted pursuant to the Commission's adjudicatory procedures set forth in 20.1.3 NMAC.

E. The Commission may choose to deliberate immediately following the close of the compliance order hearing, or at a subsequent meeting of the Commission.

F. Consistent with 20.1.3.10(B) NMAC, the Commission Chair shall in her discretion appoint a qualified Hearing Officer to perform the functions described in 20.1.3.10(B)(2) NMAC, and to exercise all powers and duties prescribed or delegated by the Commission under the Water Quality Act, NMSA 1978, Sections 74-6-1 to -17 (1967, as amended through 1993) or 20.1.3 NMAC. The Chair hereby appoints Gregory Chakalian as Hearing Officer in this matter.

G. The Hearing Officer may issue orders specifying such additional compliance order hearing procedures as may be necessary or appropriate, other than those provided for in 20.1.3 NMAC.

Dated this 22nd day of April, 2021.

Jennifer Pruett

Digitally signed by Jennifer Pruett
Date: 2021.04.22 16:02:51 -06'00'

Jennifer J. Pruett, Chair
Water Quality Control Commission

Certificate of Service

I hereby certify that on April 23, 2021 a copy of the foregoing **Order** was emailed to the persons listed below. A copy will be mailed first class upon request.

Christopher J. Vigil
Assistant General Counsel
New Mexico Environment Department
121 Tijeras Ave, NE #1000
Albuquerque, NM 87102
ChristopherJ.Vigil@state.nm.us
Counsel for the New Mexico Environment Department

Marisela Ornelas
Elegant Hills Park and Estates, LLC
P.O. Box 1178
Cortez, CO 81321
ehpestates@gmail.com

Charles Patton
Vision Mobile Home Park, LLC
2091 Locust Road
Montrose, CO 81401
312hs7@gmail.com

Robert F. Sanchez
New Mexico Office of the Attorney General
408 Galisteo St.,
Santa Fe, NM 87501
rfsanchez@nmag.gov
Counsel for the Water Quality Control Commission

Pamela Jones Digitally signed by Pamela Jones
Date: 2021.04.23 09:52:53 -06'00'

Pamela Jones, Commission Administrator
Water Quality Control Commission
P.O. Box 5469
Santa Fe, NM 87502
Phone: (505) 660-4305
Email: Pamela.Jones@state.nm.us